



NATIONAL CONGRESS OF AMERICAN INDIANS

April 2, 2012

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

Re: *Lifeline and Link Up Reform and Modernization, WC Docket No. 11-42; Lifeline and Link Up, WC Docket No. 03-109; Federal-State Joint Board on Universal Service, CC Docket No. 96-45; Advancing Broadband Availability Through Digital Literacy Training, WC Docket No. 12-23*

Dear Ms. Dortch,

On behalf of the National Congress of American Indians (NCAI) the oldest and largest representative congress of American Indians and Alaska Natives, I respectfully submit this letter for the record on *Lifeline and Link Up Reform and Modernization* (WC Docket No. 11-42)¹. Due to the high levels of unemployment and poverty on many American Indian reservations and in Alaska Native villages, the Lifeline and Link Up programs are highly utilized in Indian Country.

Now is a time of unprecedented telecommunications policy reform at the Federal Communications Commission (FCC) as it transitions U.S. telecommunications technology from analog to digital services, and we encourage the FCC to continue consultation with tribes regarding Lifeline and Link Up reforms. As the FCC focuses on cutting wasteful spending, fraud and abuse, NCAI supports efforts to increase program accountability and oversight to ensure that low-income individuals have access to these vital services. Of the proposed reforms to the Lifeline and Link Up program, NCAI is providing comments on the following:

- Elimination of the Link Up program – except on tribal lands,
- FCC Confirmation of the Lifeline program's 'one-per-household' requirement,
- Regarding the FCC's decision to not allow a P.O. Box to be used as a Lifeline address,
- Expansion of the Lifeline eligibility criteria,
- The importance of Lifeline in Indian Country,
- Tribal lands designation criteria, and
- The low-income broadband pilot program.

1. Elimination of the Link Up program – Except on Tribal Lands

NCAI recognizes the FCC's proposal to eliminate the Link Up program is an effort to reduce spending and continue the eventual phase out of analog telephone technologies. However, according to a 2006 Government Accountability Report (GAO) it was reported that in 2000 69% of lower 48 states' Native households had

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¹ Note: WC Docket No. 11-42 will be referenced throughout this document as the 'Lifeline Order'

access to basic analog telephone service as opposed to 98% availability in the U.S. as a whole². NCAI supports the FCC's recognition of the lack of basic telephone services on tribal lands and its decision to continue the Link Up program for the benefit of tribal members.

Over the past decade tribal Link Up participation has steadily increased. In 2000 eligible telecommunications carriers (ETCs) reported to the Universal Service Administrative Company (USAC) that 2,038 tribal members had utilized the Link Up program, while that number in 2011 had increased to 184,803³.

NCAI recommends an additional change to the tribal Link Up program. Since this program offers a one-time discount for the commencement of traditional wireline telephone service at a residence, NCAI recommends that tribal members be allowed to re-qualify for the Link Up program if the residence that received the discount is lost due to a natural disaster, and a reconnect charge is assessed for telephone service to the same subscriber at the same principal place of residence. Proposed language changes should be included under Section 54.413(b) of the proposed amendments to the Code of Federal Regulations (CFR)⁴.

2. FCC Confirmation of the Lifeline Programs 'One-per-Household' Requirement

NCAI is pleased that the FCC recognizes that multiple generations of families may reside at a single residence. However, the language that is used throughout the Lifeline Order does not provide the promised clarification, and NCAI is proposing an alternative approach. In an effort to clarify the 'one-per-household' certification and the eligibility of 'economic units' residing at a single residential address, the FCC proposes potentially confusing language that could lead to misinterpretation by ETCs providing Lifeline services. For instance, under paragraph 69, page 35 of the Lifeline Order, the FCC comments on its codification of the 'one-per-household' requirement stating:

First, we codify a rule limiting Lifeline support to a single subscription per household and define "household." Second, recognizing that there are instances where multiple households (i.e., families) reside at the same address we implement procedures to enable applicants in such circumstances to demonstrate at enrollment that other Lifeline recipients residing at the same address are a separate household⁵.

Recognizing 'multiple households (i.e., families)' sets the groundwork for confusion later when the FCC identifies and defines a 'household' as an 'economic unit' consistent with that definition provided under the U.S. Department of Health and Human Services' Low-Income Home Energy Assistance Program⁶. This recognition that a 'household' is further defined as an 'economic unit' would take into consideration multiple 'households' at a single residential address.

² GAO, Challenges to Assessing and Improving Telecommunications for Native Americans on Tribal Lands 10, GAO-06-189 (2006). Pg 3.

³ See Low Income 2011 Verification Results (WC Docket Nos. 11-42, 03-109; CC Docket No. 96-45). Universal Service Administrative Company. Available at <http://apps.fcc.gov/ecfs/document/view?id=7021755073>.

⁴ See Appendix A. Lifeline Report and Order and Further Notice of Proposed Rulemaking. Federal Communications Commission. Released February 6, 2012. Accessed April 2, 2012. Page 262. Available at http://transition.fcc.gov/Daily_Releases/Daily_Business/2012/db0207/FCC-12-11A1.pdf.

⁵ See Lifeline Report and Order and Further Notice of Proposed Rulemaking. Pages 35-36. Federal Communications Commission. Released February 6, 2012. Accessed April 2, 2012. Available at http://transition.fcc.gov/Daily_Releases/Daily_Business/2012/db0207/FCC-12-11A1.pdf.

⁶ *Id.* Page 27 Paragraph 74.

NCAI believes that the usage of ‘household’ should be struck and instead replaced with ‘economic unit’. Therefore, the ‘one-per-household’ requirement would instead read as the ‘one-per-economic unit’ requirement. This would remove confusion and over-complication of attempting to clarify an incorrectly-used term with a new definition while expanding on that same definition. For instance, under Appendix A – Final Rules, the FCC proposes the following changes to the Code of Federal Regulations (CFR) Part 54 - Universal Service:

(h) Household. A "household" is any individual or group of individuals who are living together at the same address as one economic unit. A household may include related and unrelated persons. An "economic unit" consists of all adult individuals contributing to and sharing in the income and expenses of a household⁷...

Although this definition recognizes that there are related and unrelated persons that may reside at a single address, which may not be participates in the same ‘economic unit,’ the FCC should refrain from using the ‘household’ phrase and instead call these ‘economic units residing at a single residential address.’ Using this language will eliminate potential confusion regarding the ‘one-per-household’ requirements that the FCC is attempting to establish for ETCs.

Additionally, in a Notice of Ex Parte filing submitted by General Communications, Inc. (GCI) on January 23, 2012, GCI highlights multiple instances where the ‘one-per-household’ and ‘economic unit’ definitions could be potentially limiting in terms of Lifeline eligibility and participation⁸. GCI noted nine hypothetical instances where individuals residing in a single household with independent financial incomes could be misrepresented by the ‘household/economic unit definition.’ NCAI requests the FCC to take into consideration the following examples GCI highlighted in its attachment to the Notice of Ex Parte filing:

6. Grandparent or other elder living with family in rural village home. The elder does not pay rent, does maintain a separate bank account, but is financially supported by the children and declared as a dependent on the tax return of the family owning the home.

Result: The grandparent/elder is not a separate economic unit and could not subscribe to Lifeline service at the same address if another member of that household also did⁹.

This reference to an elderly person residing with family members illustrates an occurrence that is also prevalent in Indian Country. NCAI requests that the FCC provide clarification regarding these types of occurrences and enable elderly tribal members to be exempt from the ‘one-per-household’¹⁰ rule and, therefore, eligible to participate in the Lifeline Program.

Similarly, the FCC should strengthen the ‘Title IX, Section A. Tribal Engagement Provisions’ outlined under the ‘Connect America Fund Order’ to include regulations stating that ETCs must ‘meaningfully engage’ with tribes to ensure tribal citizens are eligible to participate in the Lifeline

⁷ *Id.* Page 237.

⁸ See Notice of Ex Parte. General Communications, Inc. Posted in the FCC's Electronic Comment Filing System on January 24, 2012. Accessed April 2, 2012. Available at <http://apps.fcc.gov/ecfs/document/view?id=7021755064>.

⁹ *Id.*

¹⁰ As aforementioned the ‘one-per-household’ requirement should be renamed to the ‘one-per-economic unit’ requirement

program¹¹. This will ensure that ETCs coordinate with tribes in determining Lifeline eligibility under the new ‘one-per-household’¹² Lifeline provisions.

3. Regarding the FCC’s Decision to Not Allow a P.O. Box to be Used as a Lifeline Address

NCAI is concerned that the FCC’s decision not to allow a P.O. Box address to be used as a Lifeline address will force rural tribal and non-tribal households from the program¹³. The FCC on page 44, footnote 227 of the Lifeline Order stated, "We acknowledge the challenges associated with the lack of addresses on Tribal lands... The record indicates that residential addresses are frequently non-existent on Tribal lands and, where present, often differ significantly from residential addresses off Tribal lands¹⁴." Furthermore, in paragraph 87 the FCC states that, "In the case of addresses not recognized by the post office, including residences on Tribal lands, the applicant must provide a descriptive address which could be used to perform a check for duplicative support and trigger the requirement to complete the one-per-household document¹⁵."

NCAI requests that the FCC develop regulations that will define the boundaries for acceptable ‘descriptive address’ designations on tribal and rural lands. These regulations will protect tribal members and ensure they are allowed participation in the Lifeline program. The FCC should request comments from tribes upon determination of proposed language that would address this issue, and pursuant to consult with tribal governments¹⁶. Furthermore, 'Appendix C - Certification Requirements for Lifeline Subscribers'¹⁷ should be further clarified to acknowledge and provide guidelines for ETCs in collecting 'descriptive addresses' for tribal lands that may lack the infrastructure needed to easily identify residential addresses typically common in non-tribal communities.

4. Expansion of the Lifeline Eligibility Criteria

The FCC has proposed adding additional programs to the list of eligible programs for participation in the Lifeline program. These programs include participation in the Food Distribution Program on Indian Reservations (“FDPIR”) and the Women, Infant, and Children’s (“WIC”) program. Addition of these programs to the list of eligible entities to participate in the Lifeline program would benefit Indian Country and provide an avenue for additional, verifiable subscribership for Lifeline service.

¹¹ See the ‘Connect America Fund Order’. *Report and Order and Further Notice of Proposed Rulemaking* (WC Docket No. 10-90, GN Docket No. 09-51, WC Docket No. 07-135, WC Docket No. 05-337, CC Docket No. 01-92, CC Docket No. 96-45, WC Docket No. 03-109, WT Docket No. 10-208). Accessed April 2, 2012. Available at http://transition.fcc.gov/Daily_Releases/Daily_Business/2012/db0206/FCC-11-161A1.pdf.

¹² As aforementioned the ‘one-per-household’ requirement should be renamed to the ‘one-per-economic unit’ requirement

¹³ See Lifeline Report and Order and Further Notice of Proposed Rulemaking. Page 45 paragraph 87. Federal Communications Commission. Released February 6, 2012. Accessed April 2, 2012. Available at http://transition.fcc.gov/Daily_Releases/Daily_Business/2012/db0207/FCC-12-11A1.pdf.

¹⁴ *Id.* Page 44, footnote 277.

¹⁵ *Id.* Page 45, paragraph 87.

¹⁶ See FCC Order: *Establishment of the Office of Native Affairs and Policy in the Consumer and Governmental Affairs Bureau*. Order adopted July 29, 2010, and released August 12, 2010. Accessed April 2, 2012. Available at http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-10-141A1.pdf.

Note: The FCC acknowledges consultations with tribes stating, “Pursuant to the commitment in the Broadband Action Agenda and the spirit of President Obama’s *Memorandum for the Heads of Executive Departments and Agencies on Tribal Consultation* (Nov. 5, 2009), *Executive Order 13175, Consultation and Coordination with Indian Tribal Governments*, (Nov. 9, 2000), and the Commission’s *Statement of Policy on Establishing a Government-to-Government Relationship with Indian Tribes*, 16 FCC Rcd 4078 (2000), we are establishing an Office of Native Affairs and Policy. This office will serve as the official Commission liaison for ongoing consultation, coordination, and outreach to the American Indian, Alaska Native Village, and other Native communities. Page 2.

¹⁷ See Lifeline Report and Order and Further Notice of Proposed Rulemaking. Page 272, *Consumers using Post Office Box Addresses*. Federal Communications Commission. Released February 6, 2012. Accessed April 2, 2012. Available at http://transition.fcc.gov/Daily_Releases/Daily_Business/2012/db0207/FCC-12-11A1.pdf.

While FDPIR is specifically focused on tribal enrollment, addition of the WIC program will also benefit tribal members since it has been reported that American Indian and Alaska Native participation is high. According to the Food & Nutrition Service at the United States Department of Agriculture, in April 2010 American Indians represented about 11% of overall participation in the WIC program with 1,054,982 people¹⁸. Recognizing that Indian Country has high participation rates in these programs, NCAI supports adding these two programs to the eligibility list for the Lifeline program.

5. The Importance of Lifeline in Indian Country

According to a recent letter submitted to the FCC's Electronic Comment Filing System (ECFS) by the Universal Service Administrative Company (USAC), in December 2011 ETCs reported approximately 444,515 people were Tier 4 subscribers to the Tribal Lifeline program¹⁹. Although the USAC reported that these numbers were incomplete at the time of reporting by ETCs, there has been a substantial increase in Tier 4 Tribal Lifeline since 2000. According to the previously reference letter, USAC reported that in 2000 there were 17,923 subscribers to Tier 4 of the Tribal Lifeline program²⁰. Continued FCC support of this program to encourage voice telephony service to tribal participants is essential while reform and modernization efforts proceed.

Low analog telephone service penetration rates coupled with the high poverty and unemployment rates persistent in Indian Country necessitate continuation of the Lifeline and Link Up programs on tribal lands. The U.S. Census, American Community Survey's (ACS) 2010 One-Year Estimates on Poverty Status reported that 28.4% of American Indian and Alaska Native people lived in poverty and 17.9% were unemployed²¹.

6. Tribal Lands Designation Criteria

Recognition that enrolled tribal members do not necessarily reside within the exterior boundaries of a tribe's reservation is crucial to ensuring that tribal members are not excluded from participation in the Lifeline program. The FCC has stated under paragraph 160 of the Lifeline Order, "A petition for designation of off-reservation lands as Tribal lands for purposes of qualifying for Tribal lands Lifeline support must be formally made by a duly authorized official of a federally recognized Tribe and must establish good cause for such designation²²."

NCAI requests that the FCC expand upon what constitutes a 'duly authorized official' to file a petition for designation of off-reservation lands to the FCC. The FCC must take into consideration the unique governmental structures of American Indian tribes and must also recognize the unique

¹⁸ See Funding and Program Data – WIC Program, Racial/Ethnic Group Enrollment by Category, April 2010. USDA Food & Nutrition Service. Available at <http://www.fns.usda.gov/wic/racial-ethnicdata/2010piechart.htm>.

¹⁹ See Low Income 2011 Verification Results (WC Docket Nos. 11-42, 03-109; CC Docket No. 96-45). Universal Service Administrative Company. Posted to the FCC's Electronic Comment Filing System on January 24, 2012. Accessed April 2, 2012. Available at <http://apps.fcc.gov/ecfs/document/view?id=7021755073>.

²⁰ *Id.*

²¹ See U.S. Census's '2010 American Community Survey 1-Year Estimates.' Accessed April 2, 2012. Poverty Rates available at http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS_10_1YR_S1701&prodType=table. Unemployment rates available at

http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS_10_1YR_S2301&prodType=table.

Note: '2010 American Community Survey 1-Year Estimates' on American Indian and Alaska Native (AI/AN) poverty rates were based on an AI/AN population 2,465,461 of unemployment rates were based on a population of 1,900,880.

²² See Lifeline Report and Order and Further Notice of Proposed Rulemaking. Paragraph 161, pages 79-80. Federal Communications Commission. Released February 6, 2012. Accessed April 2, 2012. Available at http://transition.fcc.gov/Daily_Releases/Daily_Business/2012/db0207/FCC-12-11A1.pdf.

circumstances of Alaska Native villages and how they relate to the Alaska Native Settlement Claims Act²³. Additionally, NCAI requests that the FCC further develop and publish the criteria required to establish ‘good cause’ for designating off-reservation tribal lands. It is already apparent that the FCC recognizes the unique trust relationship that exists between federally-recognized tribes and the federal government, and has already made allowances for increased tribal access to funds through the Lifeline and Link Up programs²⁴. The Tribal Lands Designation will prove particularly helpful for inclusion of qualifying tribal citizens in the programs.

7. Low-Income Broadband Pilot Program

NCAI is pleased that the FCC will utilize Universal Service Fund (USF) savings from Lifeline and Link Up reforms to initiate a pilot program for low-income households²⁵. We support the FCC’s work and analysis to determine how the Lifeline program can be utilized to promote broadband service adoption and retention in low-income households²⁶. Furthermore we support the haste with which the FCC has directed the Wireline Competition Bureau “to initiate the Pilot Program by the release of a Public Notice specifying the Pilot Program application procedures, including dates, deadlines, and other details of the application process, no later than 15 days after receiving approval under the Paperwork Reduction Act²⁷.”

NCAI would encourage the FCC to seriously consider establishing pilot projects on tribal lands since they are typically the worst connected communities in the country. The latest data suggests that fewer than 10% of residents on tribal lands have access to terrestrial broadband services²⁸. It is estimated that access to wireless broadband on tribal lands is even lower due to random or nonexistent wireless service on tribal lands.

We appreciate the continued attention from the FCC into the needs of the tribal members who continue to be unserved and underserved by telecommunication services in the United States. In particular, we applaud the Commission for recognizing the needs tribal citizens face and the opportunities they miss as a result of the combined lack of telecommunications infrastructure and economic challenges.

²³ See Title 43 U.S.C. Chapter 32 ‘Alaska Native Claims Settlement Act.

²⁴ Paragraph 151, page 75 of the Lifeline Order states:

Relying on both section 254 and the unique trust relationship between the federal government and American Indian Tribes and Alaska Native Villages, the Commission created a fourth tier of Lifeline support, providing up to an additional \$25 (for a maximum of \$35) per month in Lifeline support to qualifying low-income consumers living on Tribal lands. The Commission also expanded Link Up to allow qualifying residents of Tribal lands to receive up to an additional \$70 (for a maximum of \$100) off of the cost of commencing telephone service. Moreover, the Commission broadened the program-based eligibility criteria for Lifeline to include the Bureau of Indian Affairs (BIA) general assistance program, Tribally-administered Temporary Assistance for Needy Families, Head Start, and the National School Lunch Program’s free lunch program.

²⁵ See Lifeline Report and Order and Further Notice of Proposed Rulemaking. Paragraph 323 and 324, page 156. Federal Communications Commission. Released February 6, 2012. Accessed April 2, 2012. Available at http://transition.fcc.gov/Daily_Releases/Daily_Business/2012/db0207/FCC-12-11A1.pdf.

²⁶ *Id.*

²⁷ *Id.* Paragraph 323, page 156.

²⁸ See ‘Connecting America: The National Broadband Plan – 3.4 Adoption and Utilization. Page 23. Accessed April 2, 2012. Available at <http://download.broadband.gov/plan/national-broadband-plan-chapter-3-current-state-of-the-broadband-ecosystem.pdf>.

Sincerely,

A handwritten signature in black ink, reading "Jacqueline Johnson Pata". The signature is fluid and cursive, with the first name "Jacqueline" being the most prominent.

Jacqueline Johnson Pata
Executive Director
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Cc: Geoffrey Blackwell
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